

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of

Revisions of Parts 2 and 15 of the Commission's	)	
Rules to Permit Unlicensed National	)	ET Docket No. 03-122
Information Infrastructure (U-NII) Devices	)	RM - 10371
in the 5 GHz Band	)	

**REPLY COMMENTS OF CINGULAR WIRELESS LLC**

Cingular Wireless LLC ("Cingular"), by its attorneys, hereby replies to comments filed in response to the *Notice of Proposed Rulemaking* in the above-captioned proceeding.<sup>1</sup> In the *NPRM*, the Commission proposes to make an additional 255 MHz of spectrum in the 5 GHz band available for use by unlicensed devices, and proposes modifications to Parts 2 and 15 of the rules to govern the operation of unlicensed devices in the new allocation.

As a threshold matter, the Commission must address its lack of authority under Section 301 of the Communications Act ("the Act") to permit radio transmissions on an unlicensed basis. Cingular has filed comments in a number of proceedings raising the fact that unlicensed operations are inconsistent with Section 301. Those comments are incorporated herein by reference.<sup>2</sup>

To the extent that the Commission finds that it does have authority to permit unlicensed operations, it should allocate specific spectrum bands for such use. Cingular agrees with comments filed by the Cellular Telecommunications and Internet Association ("CTIA") that the

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<sup>1</sup> *Revisions of Parts 2 and 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band*, ET Docket No. 03-122, RM-10371, *Notice of Proposed Rulemaking*, FCC 03-110 ("*NPRM*") (rel. June 4, 2003).

<sup>2</sup> *See e.g.*, Cingular Comments, ET Docket No. 02-135 (filed Jan. 27, 2003); Cingular Comments, ET Docket No. 02-380 (filed April 17, 2003); Cingular Comments, ET Docket No. 03-126 (filed August 1, 2003).

5 GHz band is well suited for unlicensed operations.<sup>3</sup> The allocation of specific spectrum bands would support the development and growth of unlicensed services and devices. Underlays or easements in licensed bands, such as the CMRS bands, on the other hand, raise “significant interference concerns and uncertainty that would stifle innovation and hamper full use of the spectrum.”<sup>4</sup> Cingular has documented in numerous proceedings the interference problems that would be encountered if the Commission were to authorize unlicensed devices as an underlay or easement in licensed bands.

To the extent that the Commission has the statutory authority to authorize unlicensed use of the spectrum, Cingular supports the allocation of specific bands, such as the 5 GHz band, for these purposes.

Respectfully submitted,

**CINGULAR WIRELESS LLC**

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<sup>3</sup> See CTIA comments at 2.

<sup>4</sup> See CTIA comments at 3; *see also* Cingular Comments, ET Docket No. 03-126 (filed August 1, 2003), at 8.